IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.358 of 2000

Jagdish @ Jaggu Karsan Boricha,
Life Convict No.C-11170
Yeravada Central Prison,Yeravada,
Pune-6. .. .. Appellant
(Original Accused)

Versus

The State of Maharashtra. .. Respondent
(Original Complainant)

Mr.A.G. Toraskar, Advocate appointed for Appellant.

Dr.F.R. Shaikh, Additional Public Prosecutor for Respondent-State.

CORAM : DR.S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.

Date of reserving the judgment : 19th October 2007

Date of pronouncing the judgment : 2nd November 2007

JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. The Appellant (original Accused) has challenged the judgment of the learned Additional Sessions Judge, Mumbai, dated 13.1.2000, under which the Accused has been convicted for the offence punishable under Section 302 of Indian Penal Code (IPC) and sentenced to suffer rigorous

imprisonment for life and to pay a fine of Rs.2,000/- and in default, to suffer further rigorous imprisonment for one year.

2. It has been the case of the prosecution that on 20.2.1997 at about 6.30 p.m. the Accused in front of Ghansham building, Palande Wadi, Bhattwadi, Ghatkopar (West), Bombay 400 086, committed murder of the victim deceased – Ravindra Rajaram Bhosle by assaulting him with a knife on his chest. The case of the prosecution lies mainly upon the oral evidence of two eye witnesses P.W.1 and P.W.2, the recovery of the knife at the instance of the Accused through Panch witness P.W.4 and the oral evidence being corroborated by the Inquest Panchanama, as deposed by P.W.3 and the injuries in the postmortem report as deposed by the doctor, P.W.5.

3. It has been the case of the Accused in his statement recorded under Section 313 of the Criminal Procedure Code that the prosecution witnesses “might have” deposed against him at the instance of the Police and that he has been falsely implicated at the hands of the Police. He has denied the entire prosecution case.

4. It is argued on behalf of the Accused by Mr.Toraskar that the evidence of the two witnesses cannot be believed because they knew the deceased and consequently are not the independent witnesses. It is further his argument that the

knife, which has been recovered at the instance of the Accused, is after about 50 days and no blood has been shown thereon, with the result that it is not an incriminating weapon discovered from the Accused. He has also argued that the clothes of the Accused have not been recovered. (This is naturally so because the Accused has been arrested after 40 days and hence, nothing incriminating could have been found of those clothes.) It is his contention that the Accused has no intention to kill the deceased and that the stab injuries had been caused because of the scuffle between the deceased and the Accused. He has relied upon the evidence of P.W.2 to show that the Accused himself was frightened upon the victim being injured. He has, therefore, contended that the Accused does not fall within the parameters of Section 302 of the IPC, but could fall within Section 304 (Part-II) of the IPC and the Accused having spent 10 years in jail should be set free.

5. It would be material to consider the eye witness account first. The deceased was a cleaner in the tempo. The two eye witnesses have also been cleaners in the tempo and were, at the relevant time, near the tempos which were parked where the incident took place.

6. P.W.1 has deposed that on 20.2.1997 his tempo was parked in front of Ghansham building as usual. The deceased

served a cleaner with him in tempo for a whole day. He was standing along with two others and the deceased near his tempo and chitchatting. The Accused (Jagdish @ Jaggu Karsan Boricha) was passing and giving abuses. The deceased asked him as to whom he was giving abuses. A scuffle took place. The Accused told the deceased that he would see him and went away. After sometime they proceeded to their residence. In the meanwhile, the Accused came from the back side and asked the deceased whether he was a *Dada* of that area. He gave a dash to the deceased and stabbed him with a knife on the left side of his chest and ran away. The deceased sustained bleeding injuries on the left side of his chest. He collapsed on the ground. Blood was oozing from his injury. He sent Sanjay (who was the other person standing and chitchatting) towards the house of the deceased to intimate his parents. P.W.1 himself, with the help of others, removed the deceased to the hospital for treatment. He lodged the complaint.

7. In his cross-examination, it has been shown that it was in a crowded place where the incident took place. There are big balconies in the flats of Ghanshyam building. There is a pan bidi stall as well as tea stall at the distance of 2 minutes' walk. A Police Hawaldar was pacifying the crowd. Some other persons with the same name as the Accused were

residing in that area. He had not seen the Accused prior to the date of the incident. The Accused was not giving abuses by taking any particular name. There was no dispute between the Accused and any of the cleaners. The deceased tried to save himself by raising his hands, but collapsed in an injured condition. He was groaning in pain. P.W.1 had not seen the Accused threw the knife and run away, but he had run inside the zopadpatti. They did not get time to catch him. He has refuted the suggestion that he had identified the Accused at the instance of the Police or that the Accused was not at the spot and was falsely implicated.

8. The cross-examination has barely touched the evidence relating to the actual incident. The fact that the Accused was not giving abuses to any particular person itself justifies the part of the incident that the deceased asked him as to whom he was abusing. The evidence of this witness shows that no provocation was caused by the deceased at all. It does not show any act of the deceased in the incident except asking the Accused whom he was abusing. The assault did not take place spontaneously upon the scuffle also. The Accused went away and came back with the weapon. He thereafter injured the deceased without any provocation and also without notice. He is stated to have come from the back side to ask whether he was a *Dada,* given a dash and

stabbed the deceased.

9. For want of showing any provocation at all, the knowledge that such stabbing on the left side of the chest would cause death is shown. Similarly the fact that the Accused went away and came back with the weapon and then injured the deceased, unaware, shows the intention to cause death.

10. The evidence of P.W.1 is of an independent star witness. He happened to be there at the time when they were chitchatting. He had seen the deceased only on that day as the cleaner of the tempo. He was otherwise not known to the deceased. He has no reason to falsely implicate the Accused. The clear incident vividly brings out the offence committed by the Accused.

11. P.W.2 also works as a cleaner of tempo at Ghatkopar. He was one of the persons who was with the deceased and the Accused chitchatting. He witnessed the incident. He knew the deceased as a neighbour. Both their tempos were parked outside the Ghanshyam building. The tempo of P.W.1 was parked before his tempo. He corroborates the evidence of P.W.1 with regard to the presence of P.W.1 as well as the deceased near the tempo when the tempos were parked at the place of the incident in front of Ghanshyam building on 20.2.1997.

12. He has further corroborated the eye witness account itself.

He has deposed that P.W.1, the deceased, another person as well as himself were standing near the tempo and chitchatting. Accused-Jaggu was passing along the road and giving abuses in filthy language. (He has added that the Accused was under the influence of alcohol, which fact is shown to be an omission). He has deposed that the Accused was at the distance of 1 foot from them. He further deposed that the deceased asked the Accused as to why he was giving abuses on which he asked the deceased whether he was a *Dada*. He has added that the deceased pushed the Accused and told him to go, which fact has also been brought out as an omission.) He has further deposed that the Accused told the deceased that he would see him and went away. Thereafter they proceeded to their residence. The Accused came back from his house and scuffle took place between the Accused and the deceased. The Accused took out the knife and stabbed the deceased on his chest. The deceased fell down on the ground and received bleeding injuries on his chest. The blood was oozing. The Accused ran away.

13. The entire incident completely corroborates the evidence of P.W.1. Hence, out of four persons, one of whom was the deceased himself, who was chitchatting, two of them have deposed about the incident that took place. Discarding the aforesaid two omissions, the entire incident shows the

offence committed by the Accused.

14. Upon the deceased having collapsed, P.W.2 went to the house of the deceased to intimate his parents. This fact also corroborates the evidence of the P.W.1 who has deposed that he sent his friend, P.W.2 to intimate the parents of the deceased. He came to know that the deceased was removed to Rajawadi hospital.

15. P.W.2 has deposed that he knew the Accused by his name. However, he called him by his pet name. That was because he was residing in that area. Hence, P.W.2 knew the Accused and could identify him.

16. His cross-examination shows that he was close friend of the deceased. They were at the spot of the incident for about 2 hours. Their residence is nearby. He knew the Accused because the Accused used to stand on the way along which he passed. He did not know whether there are other persons with the same name in the area. He has further deposed that there was no quarrel between him and the Accused as well as no quarrel between the deceased and the Accused prior to the date of the incident. He has also deposed that the Accused was in a frightened condition when the incident occurred.

17. His cross-examination has also not upset the evidence relating to the incident. In fact, his cross-examination

shows no prior quarrel between any one to have evoked any response by the Accused. Though he was a friend of the deceased, he also knew the Accused since they were all from the same locality. He is also an independent witness to the incident and was expected to be at that place since he was also a cleaner as was the deceased.

18. His cross-examination further shows that several people had gathered there. He had gone to the hospital with the parents of the deceased at about 8 p.m. He could not say how long he remained in the hospital. It could have been about 2-3 hours. He corroborates the fact that P.W.1 was also in the hospital with him and they all went to the Police Station. He has also deposed about the statement being recorded by P.W.1 as well as himself. This corroborates the factum of giving of FIR by P.W.1 He has reiterated in his cross-examination that the Accused stabbed the deceased on the left side of the rib below his chest. He has agreed with the suggestion that the brother of the deceased was a known *gunda* of that area. He has refuted the suggestion that he did not see the incident and falsely deposed against the Accused.

19. The two eye witness accounts unmistakably show that for no reason the Accused abused and took affront upon the question put by the deceased. He wanted to show the

deceased that he was carrying out the threat. He carried out the threat by way of a deadly weapon. He came from the rear and pushed the deceased unawares. He stabbed the deceased on the left of his chest in a vital organ. He thereafter ran away and the deceased succumbed to the injuries. A clear case of murder has accordingly been made out.

20. P.W.3 is the panch known to the deceased who was present at the time when the inquest-cum-seizure panchanama was prepared. His evidence shows injury to the left fifth inter costal space of the deceased. It also shows the injury to the left eyebrow of the deceased. The clothes of the deceased were soaked in blood. He had also gone to the hospital. He knew the deceased from childhood. He has identified the clothes of the deceased which were seized. His evidence corroborates the eye witness account relating to the place of the stabbing.

21. P.W.4 is the panch for the recovery of the weapon. His evidence shows the voluntary statement made by the Accused upon interrogation of the Accused having led them in a jeep outside the compound of Ghanshyam Krupa building. His evidence further shows the Accused going to a garbage heap on the left side of Ghanshyam Krupa building. The garbage heap was lying at a distance of 15' to 20' from

the compound wall of the Ghanshyam Krupa Building. The Accused started searching out the knife in the garbage heap. The knife, which came to be so recovered, has been produced under the panchanama, Exhibit-12, as Article-6. The witness has described the knife in evidence showing that its handle was of black colour with an outer wrapper. He has identified the knife being shown in Court. His cross-examination shows that the other panch was serving in a Printing Press. He was a witness from the locality since he was living at the distance of 15 minutes from Ganeshwadi. The Police had called him from his residence to act as panch. His cross-examination shows that the Police Station is at the walking distance of half an hour from his residence. He has stood by the panchnama and has identified the weapon.

22. The injury of the deceased is further corroborated by the postmortem report. The doctor-PW5 has deposed that he found an oval shaped incised injury at left fifth intercostal space, 8 c.m. from midline, deep into cavity, bleeding. He also found abrasion at the left side eyebrow of the deceased. The internal injuries suffered by the deceased were bleeding lungs, perforating fifth intercostal muscle and going deep into left ventricle. The deposition of the doctor shows the cause of death to be the stab injury puncturing heart of the deceased. He has deposed that such injury was possible by

sharp edged weapon such as the knife which was brought on record in this case. He has refuted the suggestion and stated that if a person falls on the fencing with sharp projections, such injury is possible The doctor's evidence shows not only the corroboration of the eye witness account but the fact that the injury was sufficient to cause the death showing the act of murder of the deceased.

23. A reading of the entire evidence shows the prosecution case of the Accused having committed murder of the deceased on 20.2.1997. The evidence of the two witnesses has been corroborated not only by one another but also by the medical evidence. Though the clothes of the Accused are not seized and blood is not found on the knife recovered by the Accused from underneath the garbage near Ghanshyam building near the place of incident, it does not affect the prosecution case. The Accused has been arrested after about 40 days. Recovery of the clothes would be an empty formality. The blood on the knife is also not expected to be present. The prosecution case has not been embellished to show implausible evidence. The fact remains that the knife recovered at the instance of the Accused is produced in Court by the panch before whom it was recovered and marked Article-6. It has been described by that witness before it has been produced. It has been shown to the

doctor whose evidence shows that such a weapon could have caused the kind of injury that the deceased suffered. The argument on behalf of the Accused that because the Accused looked frightened after the incident as per the evidence of P.W.2, it must be taken that he did not have the intention to commit the crime must be rejected. The Accused could have been frightened as he knew the consequences of act and consequently, he fled and was not available for being arrested for a long period of 40 days. The argument on behalf of the Accused that no TIP was held, though P.W.1 had not seen the Accused before the date of the incident also does not matter because P.W.2 knew the Accused as being from the same locality. Hence, the Accused could be arrested and identified in Court. The Accused has given no plausible explanation with regard to the evidence put to him, except stating that he has been falsely implicated. There is no reason for his false implication. Consequently, the case of the prosecution is fully made out. The judgment of the learned Sessions Judge cannot be faulted.

24. Consequently, the Appeal is dismissed. The conviction and sentence are confirmed.

(DR.S. RADHAKRISHNAN, J.)

(SMT.ROSHAN DALVI, J.)